ISP Liability and Net Neutrality (3)

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In May 2006, I published two articles in this newsletter on the subject of Internet Service Provider (ISP) liability for the content distributed or published via their facilities. (http://www.networkworld.com/newsletters/sec/2006/0501sec2.html and http://www.networkworld.com/newsletters/sec/2006/0508sec1.html) I reviewed the classic cases of Cubby v. CompuServe and Stratton Oakmont Inc. v. Prodigy and explained the legal issues concerning _distribution_ of uncensored materials on a communications channel versus _publication_ of controlled, edited or censored materials on such a channel.

Today I want to pick up the subject with some recent news about Verizon’s interference with voluntary communications among its subscribers.

On Wednesday, 26 September 2007, news wires carried reports that Verizon Wireless had decided to block its subscribers from using the NARAL (National Abortion Rights Action League) Pro-Choice America’s text-messaging service using “short codes” to receive news bulletins about its political activities. Sinead Carew, writing for Reuters, said that “The decision was based on a company policy that denies short codes for what it deems controversial issues, according to Verizon Wireless spokesman Jim Gerace.”<http://uk.reuters.com/article/internetNews/idUKN2733012620070927> According to several news reports, Verizon Wireless wrote to NARAL stating that it “does not accept issue-oriented (abortion, war, etc.) programs – only basic, general politician-related programs (Mitt Romney, Hillary Clinton, etc.).”<http://www.nytimes.com/2007/09/27/business/27cnd-verizon.html>

Brad Reed of Network World reported on Thursday the 27th of September that Verizon Wireless had reversed its decision. He quoted Verizon spokesman Jeffery Nelson as saying that “The decision to not allow text messaging on an important, though sensitive, public policy issue was incorrect, and we have fixed the problem that led to this isolated incident.”<http://www.networkworld.com/news/2007/092707-verizon-naral-text-messages.html>

I think that it’s a Good Thing for Verizon Wireless that they backed off their initial position so quickly. Although-I-am-not-a-lawyer-and-this-is-not-legal-advice-(for-legal-advice,-consult-an-attorney-qualified-in-this-area-of-legal-practice), it seems to me that the company could have ruined their status as a disinterested, neutral communications carrier and opened itself to serious legal liability for the content of anything that it allowed on its networks. In addition, their quick reversal saved them from making fools of themselves for claiming a risk that did not exist: the possibility that people voluntarily subscribing to a political channel would be offended by unsolicited communications.

I think that there are lessons in this debacle for everyone concerned with network services, customer relations, security and legal liability.

1. Before applying policies that are rarely used, check to see if they are consistent with current needs.
2. Before applying old policies based on technical criteria, check to see if the technical circumstances behind the old policies still apply.
3. Before letting a company employee with little or no training (I am not speaking specifically of Mr Gerace here, simply making a general point) apply rarely-used policies, have a competent resource review the proposed communication.
4. Before letting a public relations spokesperson discuss technically-based old policies, have them check their proposed public statements with technical experts and with legal counsel.

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